

DRAFT MINUTES

LAFCO REGULAR MEETING

Wednesday, January 8, 2003, 9:00 a.m.

Planning Commission Hearing Room, Hall of Administration

10 Civic Center Plaza, Santa Ana

(Any member of the public may request to speak on any agenda item at the time that item is being considered by the Commission.)

1. CALL TO ORDER

Chair Peter Herzog called the regular meeting of the Local Agency Formation Commission (LAFCO) to order at 9:05 a.m.

2. PLEDGE OF ALLEGIANCE

Commissioner John Withers led the pledge of allegiance.

3. ROLL CALL

The following commissioners and alternates were present:

- **Commissioner Randal Bressette**
- **Commissioner Peter Herzog**
- **Commissioner Arlene Schafer**
- **Commissioner Charles Smith**
- **Commissioner John Withers**
- **Alternate Commissioner Robert Bouer**
- **Alternate Commissioner Rhonda McCune**
- **Alternate Commissioner James Silva**
- **Alternate Commissioner Charley Wilson**

The following LAFCO staff members were present:

- General Counsel Scott Smith
- Executive Officer Dana M. Smith
- Assistant Executive Officer Bob Aldrich
- Project Manager Ken Lee
- Policy Analyst Kim Koeppen
- Policy Analyst Carolyn Thomas
- Policy Analyst Jay Wong
- Executive Assistant/Commission Clerk Danielle Ball
- Administrative Assistant Daphne Charles

4. SELECTION OF CHAIR AND VICE CHAIR

Chair Herzog opened the selection of the Chair and requested nominations.

Commissioner Withers nominated **Commissioner Schafer** for the position of Chair.

MOTION: Close nominations for LAFCO Chair of 2003 (Peter Herzog)
SECOND: Charles Smith
FOR: Randal Bressette, Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

MOTION: Elect Commissioner Arlene Schafer as LAFCO Chair for 2003 (John Withers)
SECOND: James Silva
FOR: Randal Bressette, Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

Commissioner Herzog officially turned the meeting over to newly elected Chair, **Commissioner Schafer**.

Commissioner Schafer complimented past Chair **Commissioner Herzog** on a great year and thanked the Commission for the opportunity to serve as the 2003 Chair.

Chair Schafer opened the selection of the Vice Chair and requested nominations.

Commissioner Bressette nominated **Commissioner Smith** for the position of Vice Chair.

MOTION: Close nominations for LAFCO Vice Chair of 2003 (Peter Herzog)
SECOND: Randal Bressette
FOR: Randal Bressette, Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

MOTION: Elect Commissioner Charles Smith as LAFCO Vice Chair for 2003 (Randal Bressette)
SECOND: Peter Herzog

FOR: Randal Bressette, Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

5. APPROVAL OF MINUTES:

a.) December 11, 2002 – Regular Commission Meeting

MOTION: Approve the December 11, 2002 minutes as presented without revisions (John Withers)
SECOND: Charles Smith
FOR: Randal Bressette, Peter Herzog, Rhonda McCune, Arlene Schafer, Charles Smith, John Withers
AGAINST: None
ABSTAIN: James Silva
MOTION PASSED

6. PUBLIC COMMENT

Chair Schafer requested public comments on any non-agenda item and received no response. She closed the public comment agenda item without any statements from the public.

7. CONSENT CALENDAR

- a.) Talega No. 6A Annexation to the City of San Clemente (CA 00-21)
- b.) Talega No. 6B Annexation to the City of San Clemente (CA 00-22)
- c.) Talega No. 6C Annexation to the City of San Clemente (CA 00-23)
- d.) Update on the Water and Sanitation Service Provision Options Study for South Orange County

Commissioner Bressette requested to pull item 7d from the consent calendar, then moved the remaining items, 7a, 7b, and 7c.

MOTION: Approve consent calendar items 7a, 7b, and 7c (Randal Bressette)
SECOND: Peter Herzog
FOR: Randal Bressette, Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

- 7d.** Executive Officer Smith amended staff's recommendations related to item 7d, stating that the recommendation should be to receive and file the Moulton Niguel Water District (MNWD) study on the consolidation of MNWD and El Toro Water District (ETWD).

Commissioner McCune asked for clarification regarding the recommendation.

Executive Officer Smith responded that if the report were received and filed it would require no further action.

Commissioner Bressette asked for clarification on the consultant's conclusions and recommendations. He expressed disappointment that the independent consultant expended a year on the study and did not include recommendations.

Jim Mocalis, independent consultant to MNWD, presented before the Commission. He reminded the Commission that the study was done for MNWD, and therefore the report was done per the specifications of MNWD's Board of Directors. He explained that subcommittees made up of Board members from both districts struggled with the issues and found several key areas of non-concurrence—1) two independent Boards would be making decisions which would affect the other Board for a period of five to ten years; 2) the retirement vesting for ETWD employees became a key issues; 3) the service area commonly referred to as the "panhandle" has become a very contentious issue in that the City of Lake Forest wants IRWD to service the panhandle, and MNWD doesn't want to become involved in the debate. He stated that neither Board sees any benefit to consolidation, and neither wishes to proceed with consolidation at this time.

Commissioner Bouer commented that the joint reservoir project recently unveiled by MNWD and ETWD was demonstrative of the water districts' abilities to work collaboratively. He added that the citizens of Laguna Woods remain very satisfied with the services provided by ETWD, and he spoke in favor of local control.

Commissioner Bressette asked if the Commission had access to the original motion related to the study.

Executive Officer Smith said that the records related to the original motion could be brought to the hearing room from the LAFCO offices.

Commissioner Bressette stated that he believed the original purpose of the study was to bring forward to LAFCO for discussion the issues that would suggest or prevent a consolidation of the two districts. He voiced opposition to the motion to receive and file. He also asked if staff had provided a copy of the study and related staff report to the key stakeholders.

Executive Officer Smith stated that the stakeholders received a copy of the study and staff report along with the LAFCO agenda at the same time as the commissioners.

Commissioner Bressette indicated that the cities had not been given adequate time with which to respond with comments. He moved that staff circulate the staff report and supplemental attachments to all of the stakeholders, requesting their responses within 60 days, and then return to the Commission in March 2003 to report the stakeholders' comments to the Commission for consideration.

Commissioner Smith seconded the motion, stating that it was a reasonable thing to do if there was lingering doubt about the validity of the study.

Commissioner Withers voiced opposition to the motion, adding that consolidation is best accomplished when the parties work together toward a common, agreed upon goal. He indicated that he didn't believe that another 60 days to gather comments would change the circumstances of the situation given that both districts worked together in good faith and mutually decided that now was not the best time to move forward with consolidation.

Commissioner Wilson echoed **Commissioner Withers's** comments. He mentioned that the State fiscal crisis would likely have an, as yet, unknown effect on many of the affected agencies and how they have been funded to date, adding that forcing an action at this time would be premature and dangerous given those unknown factors.

Commissioner Herzog asked Mr. Mocalis about the supporting documentation related to the study.

Mr. Mocalis responded that most of the documentation was in the possession of MNWD and the rest with ETWD.

Commissioner Herzog expressed disappointment in the report, saying that the Commission intended for more analysis and factual background. That aside, he said, it would be best to receive and file the report at this time given the other issues that the Commission would be facing, not the least of which is municipal service reviews.

Commissioner Bressette said that the consultant's response in the form of the provided report was an insult. He said that the report lacked the specific details the Commission needed to make an informed decision and added that the cities had not had adequate opportunity to respond to the consultant's report. He concluded his statement by saying that the study likely did not even meet the requirements of the Commission's original motion, adding that a 60-day continuance, therefore, would be the most appropriate action for the Commission to take.

Chair Schafer expressed her support of staff's recommendation to receive and file the report.

MOTION: **Staff to circulate staff report and supplemental attachments to the key stakeholders, requesting their responses within 60**

days, then to return to Commission in March 2003 to report stakeholders' comments (Randal Bressette)

SECOND: Charles Smith
FOR: Randal Bressette, Charles Smith
AGAINST: Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, John Withers
ABSTAIN: None
MOTION FAILED

Commissioner Herzog moved staff's recommendation to receive and file the report, and **Commissioner Withers** seconded the motion.

MOTION: Receive and file MNWD study on the consolidation of MNWD and ETWD (Peter Herzog)
SECOND: John Withers
FOR: Peter Herzog, Rhonda McCune, Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: Randal Bressette
ABSTAIN: None
MOTION PASSED

8. PUBLIC HEARING

a.) Reconsideration of Emerald Bay Service District Reorganization (RO 01-12)

- 8a.** Project Manager Ken Lee summarized the Commission's actions from November 4, 2002 related to the Emerald Bay Service District (EBSD) Reorganization (RO 01-12) and EBSD's subsequent request for reconsideration. He stressed that the Cortese-Knox-Hertzberg Act requires that a request for reconsideration be based on new or different facts that could not have been presented previously and that warrant the reconsideration. He said that it was staff's position that none of EBSD's reasons for reconsideration constituted new or different facts that could not have been presented previously at the November 4th meeting, nor did they address any of the over-arching public policy reasons and bases for the Commission's denial of the application.

Chair Schafer opened the hearing to public comment, stating that she would call members of the public to the podium to address the Commission based on the speaker cards that she received.

Supervisor Tom Wilson voiced his support of EBSD's application, stressing his own personal deliberations related to the application. He said that the community is well informed and supports the application.

Bill Hart, member of the EBSD Board of Directors, spoke on behalf of the community, advocating EBSD's request for reconsideration. He resummarized the presentation made before the Commission on November 4, 2002. Further, he

summarized what the district considered new information that warranted reconsideration by the Commission: 1) EBSD water system can be protected from catastrophic liability in the form of the \$50M insurance policy the district carries; 2) EBSD customers are guaranteed the same allocation of water as customers within Laguna Beach County Water District (LBCWD) and every retail agency with the Municipal Water District of Orange County (MWDOC); 3) EBSD has a strategic, long-term plan for the repair and replacement of the entire EBSD water system; 4) EBSD will put any remaining revenues toward rate reduction; and 5) Emerald Bay is not an “island” and wants the right to affect water policy as it directly relates to the community.

Mr. Hart called for a show of support from the audience, asking that the record reflect the strong support from the community.

Commissioner Smith asked how EBSD intended to lower water rates.

Mr. Hart referred to the \$170K tax allocation that the district would receive annually.

Commissioner Smith asked, given the fact that the proposal would not generate any additional revenues, how EBSD proposed to lower water rates.

Commissioner Withers exited the Commission meeting.

Joe Sovella presented before the Commission, stating that LBCWD would be relieved from providing maintenance. He said that EBSD could then pass wholesale maintenance costs and water rates on to the ratepayers, rather than the retail maintenance costs and water rates that are currently passed along by LBCWD.

Renae Hinchey, General Manager of LBCWD, stated that EBSD would be charged seven cents less per unit by contracting directly through MWDOC than through LBCWD, which is the same wholesale cost that LBCWD pays per unit.

Commissioner Smith asked for clarification on the saving projection totals referenced in the report. He wanted to understand how the district calculated those totals. He also expressed concern over the report’s references to bond authority.

Ms. Hinchey said that it was a rather complicated formula with several pages of supporting figures but assured **Commissioner Smith** that the reduction in overhead calculated to a seven-cent per unit difference.

Mr. Hart stated that the issue of bond authority was only mentioned as a backstop and was not, in fact, proposed or anticipated in this situation.

Commissioner Bouer asked for clarification on the insurance coverage.

Mr. Hart responded that the coverage was already in place.

Commissioner Withers returned to the Commission meeting.

Commissioner Bressette clarified that EBSD's insurance coverage likely covered only the cost of the property damage resultant from the broken pipe but not the pipe itself. He expressed concern that a slow leak could do an incredible amount of damage before the problem would be detected.

Commissioner Silva exited the Commission meeting.

Mr. Hart responded affirmatively, that the liability coverage would cover property damage and that the tax allocation would help cover the repair costs related to the pipes in the event of a catastrophic occurrence.

Commissioner Bressette, referring to the district's report, asked for clarification regarding a proposal to raise property taxes.

Mr. Hart stated that the reference was included in the report as an example but was not, in fact, proposed.

Commissioner Bressette asked how EBSD proposed to cover the administrative costs related to water provision, stating that though LBCWD will realize a savings in its overhead, EBSD would likely have to absorb those same operating expenditures.

Mr. Hart responded that the appropriate staff and facilities are already in place, as is the Board of Directors, which serves the district free of charge.

Commissioner Silva returned to the Commission meeting.

Commissioner Bressette interjected that EBSD would have to absorb extra production costs, citing for example the costs of billing its ratepayers for water.

Mr. Hart answered that those types of expenditures would be covered by the annual tax allocation.

Commissioner Smith asked if EBSD protections in place to address the potential future application of a surcharge on EBSD and its ratepayers.

Mr. Hart responded that the negotiated contract would ensure predictability for a set number of years (i.e., the term of the contract). He added that EBSD would then have the power to negotiate directly with MWDOC.

Chair Schafer suggested that the public hearing would have to move forward more expeditiously.

Commission McCune stated that she would have to leave the Commission meeting by 10:30 a.m. and would appreciate a conclusion to the public hearing.

Mr. Hart concluded his presentation, asking that the names on the speaker cards be listed as part of the record in support of EBSD's application. In the interest of time, the following speakers opted to forego testimony: Garrett Pack, Bill Watchel, Fritz Stradling, Murray Craig, Frank Everett, David Horne, and John Fox.

Chair Schafer closed the public hearing without any additional comments from the public.

Commissioner Withers urged support of EBSD's request for reconsideration.

Commissioner Smith stated that, though he previously opposed the EBSD application, he didn't see any harm in allowing the reconsideration. He stressed that he wants protection for EBSD ratepayers and proof of savings to the ratepayers.

At **Commissioner Bressette's** request, Project Manager Lee explained the necessary environmental documentation that would be required.

Executive Officer Smith clarified that the draft three party agreement would likely address most of the environmental issues if a mitigated Negative Declaration was adopted. She added that the Commission could set a hearing only after the parties have agreed and adopted that agreement, as it would be integral to the Commission's approval of the Negative Declaration. She said that the Commission could move forward very rapidly after the agreement is ratified between the three parties.

Commissioner Bressette reiterated his concern related to EBSD's liability insurance coverage.

Commissioner Herzog said that, regardless of the Commission's decision related to EBSD's request for reconsideration, the Commission would revisit the issue during the required municipal service reviews. He reminded the Commission that the Cortese-Knox-Hertzberg Act requires that a request for reconsideration be based on new or different facts that could not have been presented previously and that warrant the reconsideration. He stated that, in his opinion, none of the information brought before the Commission during the public hearing met that requirement. Additionally, he cautioned that the State's fiscal crisis could have a significant impact on tax revenue allocations. He recommended a denial of the request for reconsideration.

Commissioner Withers moved approval of EBSD's request for reconsideration, and **Commissioner Smith** seconded the motion.

Commissioner McCune asked for clarification regarding the new facts and findings.

Commissioner Withers stated that he was satisfied that EBSD met its burden to present new information to the Commission, referencing the information provided related to insurance liability and water availability, in addition to the fact that many of the commissioners were able to conduct site visits of EBSD's facilities following the November 2002 meeting and were therefore more familiar with the application and its ramifications.

Commissioner Bressette asked Legal Counsel Smith if he concurred with **Commissioner Withers's** opinion with regard to new findings.

Legal Counsel Smith responded that the adequacy of the facts and findings are at the Commission's discretion.

Commissioner Bressette again reiterated his concern regarding potential future catastrophic damages and its resultant fiscal impact on the community of Emerald Bay. He stated that he would not support the reconsideration.

Chair Schafer indicated that she had the opportunity to tour EBSD's facilities. She commented that the uniqueness of the situation warrants reconsideration.

Commissioner Bouer indicated that he didn't agree that it was justifiable to create a new special district for 522 homes. He expressed agreement with staff's recommendation to deny the reconsideration.

MOTION: Approve reconsideration of Emerald Bay Service District Reorganization (RO 01-12) (John Withers)
SECOND: Charles Smith
FOR: Arlene Schafer, James Silva, Charles Smith, John Withers
AGAINST: Randal Bressette, Peter Herzog, Rhonda McCune
ABSTAIN: None
MOTION PASSED

Commissioners McCune, Silva, and Wilson exited the Commission meeting.

9. COMMISSION DISCUSSION

a.) Personnel Policies & Procedures Manual

- 9a.** Assistant Executive Officer Aldrich highlighted revisions to the draft personnel policies and procedures guidelines as they related to military leave provisions, the Family & Medical Leave Act (FMLA), and tuition reimbursement for LAFCO employees.

Commissioner Wilson returned to the Commission meeting during Assistant Executive Officer Aldrich's presentation.

Commissioner Bressette moved approval of the proposed Personnel Policies & Procedures Manual, and **Commissioner Wilson** seconded the motion.

Citing budget concerns, **Commissioner Herzog** cautioned that unpaid leave could result in substantial negative consequences for an organization as small as LAFCO. He stated that he could not support the FMLA policy.

Commissioner Bressette asked for staff's response to **Commissioner Herzog's** concerns.

Executive Officer Smith said that staff retention was the chief concern in drafting the FMLA policy. She stated that, while there would be an admitted impact to the organization if one of its staff members had to take an extended unpaid leave, it would be more costly to recruit and train a new employee.

MOTION: **Adopt proposed Personnel Policies & Procedures Manual as presented without revision (Randal Bressette)**
SECOND: **Charley Wilson**
FOR: **Randal Bressette, Arlene Schafer, Charles Smith, Charley Wilson**
AGAINST: **Peter Herzog**
ABSTAIN: **None**
MOTION PASSED

10. COMMISSIONER COMMENTS

Chair Schafer requested additional comments from the commissioners. Receiving no response, she closed commissioner comments.

11. INFORMATIONAL ITEMS

- a.) LAFCO Strategic Planning Session – January 31, 2003
- a.) Orange County Leadership Symposium 2003

11a. Executive Officer Smith reminded the Commission that the 2003 LAFCO Strategic Planning Session would be held at the Laguna Hills Community Center on Friday, January 31st at 9 a.m. She further indicated that staff would coordinate the rollout of the municipal service review program at the Strategic Planning Session.

11b. Executive Officer Smith reminded the Commission that the Orange County Leadership Symposium would be held January 23rd through the 26th. She stated that invitations to OCLS would be extended to the cities and special districts. She urged the Commission to contact her if they knew anyone who would be interested in attending.

Chair Schafer adjourned the Commission meeting for closed session at 11:00 a.m., stating that there would be no reportable items.

12. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Subdivision (a) of Section 65965.9)

Name of case: Neja v. Local Agency Formation Commission of Orange County; City of Costa Mesa, et. al.

13. ADJOURNMENT

Chair Schafer adjourned the meeting at 11:15 a.m.

* * * * *

DANA M. SMITH
Executive Officer
Orange County Local Agency Formation Commission

By: _____
Danielle M. Ball
Commission Clerk